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EDMONSON et al. v. THOMASSON et al.

June 8, 1911.

[71 S. E. 536.]

1. Set-Off and Counterclaim (§ 44*)—Partnership and Individual Demands.—Partnership demands and demands due to individual partners cannot be set off against each other.

[Ed. Note.—For other cases, see Set-Off and Counterclaim, Cent. Dig. §§ 82-99; Dec. Dig. § 44.* 10 Va.-W. Va. Enc. Dig. 896; 12 Va.-W. Va. Enc. Dig. 258.]

2 Set-Off and Counterclaim (§ 44*)—Partnership and Individual Demands.—A partner, indorsing a firm note discounted by a bank, placing the proceeds to the credit of the firm, is, on the insolvency of the bank and firm, entitled to set off his deposit in the bank as against his liability as indorser on the receiver, resorting to him because of the inability of the firm to pay; but where the partner, as indorser, can indemnify himself by resort to the assets of the firm, if solvent, or to the extent of any dividends to which he is entitled on a distribution of the firm's assets, he is not entitled to such set-off.

[Ed. Note.—For other cases, see Set-Off and Counterclaim, Cent. Dig. §§ 82-99; Dec. Dig. § 44.* 10 Va.-W. Va. Enc. Dig. 896; 12 Va.-W. Va. Enc. Dig. 258.]

Appeal from Circuit Court, Mecklenburg County.

Petition by R. L. Thomasson and others against J. W. Edmonson and another, receivers of the Bank of Mecklenburg, to establish a right to set-off. From a decree granting the relief prayed for, the receivers appeal. Reversed and remanded.

E. P. Buford, C. T. Baskerville, Abner C. Goode, W. E. Homes, and Chas. J. Faulkner, Jr., for appellants.

R. Turnbull & Son, for appellees.

HARRISON et al. v. CLEMENS, Road Com'r, et al.

June 8, 1911.

[71 S. E. 538.]

1. Mandamus (§ 173*)—Voluntary Nonsuit—Condition of Cause.—The right to take a nonsuit, recognized by Code 1904, § 3387, providing that the right to a nonsuit must be exercised before the jury retires from the bar, exists until the case is submitted for decision to the jury, or to the court when sitting without a jury; so that a relator in mandamus, who before the conclusion of the argument before the court trying the case asks leave to take a nonsuit, is entitled

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.